

# State of South Dakota

## EIGHTY-FIRST SESSION LEGISLATIVE ASSEMBLY, 2006

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### HOUSE BILL NO. 1154

Introduced by: Representatives Dykstra, Dennert, Faehn, Fryslie, Haley, Halverson, Hargens, Jensen, McCoy, Miles, Novstrup, Rhoden, Sigdestad, and Street and Senators Peterson (Jim), Bartling, Duenwald, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Hundstad, Koskan, Lintz, McNenny, Olson (Ed), Smidt, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to impose an excise tax on the gross receipts from the sale  
2 and use of farm machinery, farm attachment units, and irrigation equipment and to exempt  
3 the gross receipts from the sale of farm machinery, farm attachment units, and irrigation  
4 equipment from sales and use tax.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

6 Section 1. There is hereby imposed an excise tax of four percent on the gross receipts from  
7 the sale, resale, or lease of farm machinery, attachment units, and irrigation equipment used  
8 exclusively for agricultural purposes. However, if any trade-in or exchange of used farm  
9 machinery, attachment units, and irrigation equipment is involved in the transaction, the excise  
10 tax is only due and may only be collected on the cash difference.

11 Section 2. An excise tax is imposed on the privilege of the use, storage, or consumption in  
12 this state of farm machinery, attachment units, and irrigation equipment used exclusively for  
13 agricultural purposes not originally purchased for use in this state, but thereafter used, stored,  
14 or consumed in this state, at the same rate as provided in section 1 of this Act and imposed on



1 the fair market value of the property at the time it is brought into this state. However, if any  
2 trade-in or exchange of used farm machinery, attachment units, and irrigation equipment is  
3 involved in the transaction, the excise tax is only due and may only be collected on the cash  
4 difference. The use, storage, or consumption of farm machinery, attachment units, and irrigation  
5 equipment used exclusively for agricultural purposes that is more than seven years old at the  
6 time it is brought into the state by the person who purchased such property for use in another  
7 state is exempt from the tax imposed by this Act.

8 Section 3. For purposes of this Act, farm machinery, includes all-terrain vehicles of three  
9 or more wheels used exclusively by the purchaser for agricultural purposes on agricultural land.  
10 The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle will be  
11 used exclusively for agricultural purposes.

12 Section 4. Farm machinery and attachment units, other than replacement parts, and irrigation  
13 equipment sold at public auction shall be taxed pursuant to section 1 of this Act without regard  
14 to its intended use.

15 Section 5. The tax imposed by section 1 of this Act shall be collected and administered by  
16 the Department of Revenue and Regulation.

17 Section 6. Any person who holds a license issued pursuant to this Act or chapters 10-33A,  
18 10-45, 10-45D, 10-46A, 10-46B, or 10-52A or who is a person whose receipts are subject to the  
19 tax imposed by or this Act or chapters 10-33A, 10-45, 10-45D, 10-46A, 10-46B, or 10-52A  
20 shall, except as otherwise provided in this section, file a return, and pay any tax due, to the  
21 Department of Revenue and Regulation on or before the twentieth day of the month following  
22 each monthly period. The return shall be filed on forms prescribed and furnished by the  
23 department.

24 If the person remits the tax by electronic transfer to the state, the person shall file the return

1 by electronic means on or before the twenty-third day of the month following each monthly  
2 period and remit the tax on or before the second to the last day of the month following each  
3 monthly period.

4 The secretary may require or allow a person to file a return, and pay any tax due, on a basis  
5 other than monthly and the return and remittance is due the last day of the month following the  
6 reporting period, or at time otherwise determined by the secretary.

7 The secretary of revenue and regulation may grant an extension of not more than five days  
8 for filing a return and remittance. However, the secretary of revenue and regulation may grant  
9 an extension for remitting the tax to a qualified business as provided in §§ 10-45-99 to 10-45-  
10 107, inclusive, for six months.

11 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return  
12 or remittance is not made on time.

13 Section 7. Each tax collection and enforcement provision of chapter 10-45, including penalty  
14 and interest, apply to this Act if applicable.

15 Section 8. The secretary of revenue and regulation may promulgate rules pursuant to chapter  
16 1-26 concerning:

- 17 (1) Licensing, including bonding and filing license applications;
- 18 (2) The filing of returns and payment of the tax;
- 19 (3) Determining the application of the tax and exemptions;
- 20 (4) Taxpayer record-keeping requirements;
- 21 (5) Determining auditing methods; and
- 22 (6) Determining the age and value of the farm machinery, attachment units, and  
23 irrigation equipment brought into this state.

24 Section 9. Any person who:

- 1       (1)    Makes any false or fraudulent return in attempting to defeat or evade the tax imposed  
2            by this Act is guilty of a Class 6 felony;
- 3       (2)    Fails to pay tax due under this Act within thirty days from the date the tax becomes  
4            due is guilty of a Class 1 misdemeanor;
- 5       (3)    Fails to keep the records and books required by section 13 of this Act or refuses to  
6            exhibit these records to the secretary of revenue or the secretary's agents for the  
7            purpose of examination is guilty of a Class 1 misdemeanor;
- 8       (4)    Fails to file a return required by this Act within thirty days from the date the return  
9            is due is guilty of a Class 1 misdemeanor;
- 10      (5)    Willfully violates any rule of the secretary of revenue for the administration and  
11            enforcement of the provisions of this Act is guilty of a Class 1 misdemeanor; or
- 12      (6)    Violates either subdivision (2) or subdivision (4) two or more times in any twelve-  
13            month period is guilty of a Class 6 felony.

14       Section 10. That § 10-59-1 be amended to read as follows:

15       10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes  
16       or fees imposed by, and to any civil or criminal investigation authorized by, chapters 10-39, 10-  
17       39A, 10-39B, 10-43, 10-45, 10-45D, 10-46, 10-46A, 10-46B, 10-46C, 10-47B, 10-52, 10-52A,  
18       32-3, 32-3A, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48, 49-31-51, 50-4-13  
19       to 50-4-17, inclusive, this Act, and the provisions of chapter 10-45B.

20       Section 11. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as  
21       follows:

22       There are exempted from the provisions of this chapter and from the tax imposed by it, gross  
23       receipts from the sale, resale, or leasing of farm machinery, attachment units, and irrigation  
24       equipment used exclusively for agricultural purposes. The term, farm machinery, includes

1 all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural  
2 purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that  
3 the all-terrain vehicle will be used exclusively for agricultural purposes.

4 Section 12. That § 10-45-3 be repealed.

5 ~~10-45-3. There is hereby imposed a tax of four percent on the gross receipts from the sale~~  
6 ~~or resale of farm machinery and attachment units other than replacement parts, or irrigation~~  
7 ~~equipment used exclusively for agricultural purposes by licensed South Dakota retailers.~~  
8 ~~However, if any trade-in or exchange of used farm machinery is involved in the transaction, the~~  
9 ~~tax is only due and shall be collected only on the cash difference.~~

10 Section 13. That § 10-45-3.2 be repealed.

11 ~~10-45-3.2. For purposes of § 10-45-3, farm machinery shall include all-terrain vehicles of~~  
12 ~~three or more wheels used exclusively by the purchaser for agricultural purposes on agricultural~~  
13 ~~land. The purchaser shall sign and deliver to the seller a statement that the all-terrain vehicle~~  
14 ~~will be used exclusively for agricultural purposes.~~

15 Section 14. That § 10-45-3.3 be repealed.

16 ~~10-45-3.3. Farm machinery and attachment units, other than replacement parts, and~~  
17 ~~irrigation equipment sold at public auction shall be taxed pursuant to § 10-45-3 without regard~~  
18 ~~to its intended use.~~

19 Section 15. That § 10-45-5 be amended to read as follows:

20 10-45-5. There is imposed a tax at the rate of four percent upon the gross receipts of any  
21 person from engaging in the business of leasing farm machinery or irrigation equipment used  
22 for agricultural purposes and four percent upon the gross receipts of any person from engaging  
23 or continuing in any of the following businesses or services in this state: abstracters;  
24 accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car

1 washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration;  
2 cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and  
3 towel supply; membership or entrance fees for the use of a facility or for the right to purchase  
4 tangible personal property or services; photography; photo developing and enlarging; tire  
5 recapping; welding and all repair services, except farm machinery, farm attachment units, or  
6 irrigation equipment repair services; cable television; and rentals of tangible personal property  
7 except leases of tangible personal property between one telephone company and another  
8 telephone company, motor vehicles as defined by § 32-5-1 leased under a single contract for  
9 more than twenty-eight days and mobile homes. However, the specific enumeration of  
10 businesses and professions made in this section does not, in any way, limit the scope and effect  
11 of § 10-45-4.

12 Section 16. That § 10-45-5.2 be amended to read as follows:

13 10-45-5.2. The following services enumerated in the Standard Industrial Classification  
14 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and  
15 Budget, Office of the President, are specifically subject to the tax levied by this chapter: metal  
16 mining services (group no. 108); coal mining (major group 12); nonmetallic minerals (except  
17 fuels) services (group no. 148); service industries for the printing trade (group no. 279); coating,  
18 engraving and allied services (group no. 347); communication, electric and gas services  
19 (division E except group nos. 483, 494 and 495); hotels, motels, and tourist courts (group no.  
20 701); rooming and boarding houses (group no. 702); camps and recreational vehicle parks  
21 (group no. 703); personal services (major group 72); business services (major group 73);  
22 automotive repair, services, and parking (major group 75); miscellaneous repair services (major  
23 group 76), except farm machinery, farm attachment units, or irrigation equipment repair  
24 services; amusement and recreation services (major group 79); legal services (major group 81);

1 landscape and horticultural services (group no. 078); engineering, accounting, research,  
2 management, and related services (major group 87, except industry no. 8733); title abstract  
3 offices (group no. 654); consumer credit reporting agencies, mercantile reporting agencies, and  
4 adjustment and collection agencies (group no. 732); real estate agents and managers (group no.  
5 653); funeral service and crematories (group no. 726), except that purchases of goods or services  
6 with money advanced as an accommodation are retail purchases and are not includable in gross  
7 receipts for funeral services and fees paid or donated for religious ceremonies are not includable  
8 in gross receipts for funeral services; loan brokers (industry no. 6163); repair shops and related  
9 services, not elsewhere classified (industry no. 7699) but only locksmiths and locksmith shops;  
10 and floor laying and other floor work not elsewhere classified (industry no. 1752). In addition,  
11 the following services are also specifically subject to the tax levied by this chapter: livestock  
12 slaughtering services; dog grooming services; airplane, helicopter, balloon, dirigible and blimp  
13 rides for amusement or sightseeing; the collection and disposal of solid waste; and all appraiser's  
14 services. The services enumerated in this section may not be construed as a comprehensive list  
15 of taxable services but rather as a representative list of services intended to be taxable under this  
16 chapter.

17 Section 17. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as  
18 follows:

19 There are exempted from the provisions of this chapter and from the tax imposed by it, gross  
20 receipts from the sale, resale, or lease of farm machinery, attachment units, and irrigation  
21 equipment used exclusively for agricultural purposes. The term, farm machinery, includes  
22 all-terrain vehicles of three or more wheels used exclusively by the purchaser for agricultural  
23 purposes on agricultural land. The purchaser shall sign and deliver to the seller a statement that  
24 the all-terrain vehicle will be used exclusively for agricultural purposes.